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BEFORE THE ARIZONA CORPORATION COMMISSION

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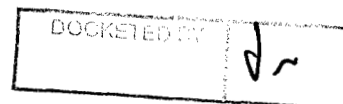
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IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S
COMPLIANCE WITH § 271 OF THE
TELECOMMUNICATIONS ACT OF 1996

Docket No. T-00000A-97-0238

REQUEST FOR CLARIFICATION
OF PROCEDURAL ORDER DATED
JUNE 12, 2000

AT&T Communications of the Mountain States, Inc., and TCG Phoenix

(collectively, "AT&T") seek clarification of the Procedural Order dated June 12, 2000.

I. INTRODUCTION

On June 12, 2000, an Administrative Law Judge issued a Procedural Order establishing a schedule for reviewing checklist items 1 (interconnection, including collocation), 2 (network elements), 4 (loops), 5 (switching), 6 (transport), 11 (local number portability) 14 (resale) and backsliding and penalties issues. The Procedural Order does not address the scope of the workshops, *e.i.*, whether the workshops are limited to determining U S WEST Communications, Inc. ("U S WEST") has met the legal obligations necessary to satisfy the checklist items, or whether the parties are to review performance data to determine whether U S WEST is actually providing, or capable of providing, nondiscriminatory access to the checklist items.

It is AT&T's position that workshops should be limited to evaluating whether U S WEST has satisfied its legal obligations to provide the checklist items; all performance data should be reviewed once -- after the operations support systems ("OSS") testing is complete.

II. ARGUMENTS

A. FCC Review of Checklist Compliance

The Federal Communications Commission (“FCC”), in the *Ameritech Michigan Order*, defined what it means to “provide” a checklist item.¹ Generally, a Bell Operating Company (“BOC”) “provides’ a checklist item if it actually furnishes the item at rates and on terms and conditions that comply with the Act or, where no competitor is actually using the item, if the BOC makes the checklist item available as both a legal and a practical matter.”²

Like the Department of Justice, we emphasize that the mere fact that a BOC has “offered” to provide checklist items will not suffice for a BOC petitioning for entry under Track A to establish checklist compliance. To be “providing” a checklist item, *a BOC must have a concrete and specific legal obligation to furnish the item upon request* pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item. *Moreover, the petitioning BOC must demonstrate that it is presently ready to furnish each checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality.* For instance, the BOC may present operational evidence to demonstrate that the operations support systems functions the BOC provides to competing carriers will be able to handle reasonably foreseeable demand volumes for individual checklist items. As discussed below, *such evidence may include carrier-to-carrier testing, independent third-party testing, and internal testing of operations support systems functions, where there is no actual commercial usage of a checklist item.*³

In making this evaluation [whether a BOC’s OSS provide nondiscriminatory access], *we generally agree with the Department of Justice and the Michigan Commission that we must make a two-part inquiry.* First, the Commission must determine whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them. Second, the Commission must

¹ *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 (rel. Aug. 19, 1997), (“*Ameritech Michigan Order*”), ¶¶ 107-115.

² *Id.*, ¶ 110 (footnote omitted).

³ *Id.* (emphasis added; footnotes omitted).

determine whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter.⁴

*Under the first part of this inquiry, a BOC must demonstrate that it has developed sufficient electronic and manual interfaces to allow competing carriers to access all of the necessary OSS functions. ...Finally, the BOC must ensure that its operations support systems are designed to accommodate both current demand and projected demand of competing carriers for access to OSS functions.*⁵

*Under the second part of the inquiry, the Commission will examine operational evidence to determine whether the OSS functions provided by the BOC to competing carriers are actually handling current demand and will be able to handle reasonably foreseeable demand volumes. We agree with the Department of Justice that the most probative evidence that OSS functions are operationally ready is actual commercial usage. Carrier-to-carrier testing, independent third-party testing, and internal testing also can provide valuable evidence pertaining to operational readiness, but are less reliable indicators of actual performance than commercial usage. ...*⁶

For those OSS functions provided to competing carriers that are analogous to OSS functions that a BOC provides to itself in connection with retail service offerings, the BOC must provide access to competing carriers that is equal to the level of access that the BOC provides to itself, its customers or its affiliates, in terms of quality, accuracy and timeliness. ...⁷

For those OSS functions that have no retail analogue, such as the ordering and provisioning of unbundled network elements, the BOC must demonstrate that the access it provides to competing carriers satisfies its duty of nondiscrimination because it offers an efficient competitor a meaningful opportunity to compete. In examining whether the quality of access provided to such functions "provides an efficient competitor a meaningful opportunity to compete," *we will, in the first instance, examine whether specific performance standards exist for those functions. In particular, we will consider whether appropriate standards for measuring the performance of particular OSS functions have been adopted by the relevant state commission or agreed upon by the parties in an interconnection agreement or during the implementation of such an agreement. As a general proposition, specific performance standards adopted by a state commission in an arbitration decision would be more persuasive evidence of commercial reasonableness than a standard unilaterally adopted by the BOC outside of its interconnection agreement. ...*⁸

⁴ *Id.*, ¶ 136 (emphasis added; footnotes omitted).

⁵ *Id.*, ¶ 137 (emphasis added; footnotes omitted).

⁶ *Id.*, ¶ 138 (emphasis added; footnotes omitted).

⁷ *Id.*, ¶ 139 (footnote omitted).

⁸ *Id.*, ¶ 141 (emphasis added; footnotes omitted).

The FCC has stated “that the persuasiveness of a third-party review is dependent upon the qualifications, experience and independence of the third-party and the conditions and scope of the review itself.”⁹ The FCC concluded that “[a]n examination of a BOC’s OSS performance is therefore integral to [the FCC’s] determination of whether a BOC is offering all of the items contained in the competitive checklist.”¹⁰

B. Arizona OSS Test

U S WEST has elected to conduct an independent third-party test of its OSS in Arizona. The Arizona OSS test provides for an audit of the performance indicator definitions (“PIDs”) and the data collected under the PIDs. The audit verifies that the performance data is collected consistent with the PIDs and are accurately measured and reported. Prior to the completion of the audit, there is no way to verify the accuracy and reliability of the performance data. Any discussion of the performance data prior to the completion of the audit requires the parties to either assume that the data is accurate and reliable for purposes of discussion, or requires an investigation of the accuracy and reliability of the performance data during the workshops to determine whether the data are PID compliant. Neither approach is an acceptable solution. The best course of action is to wait for the OSS testing to be completed. This will permit one review of the all *audited* data, instead of review of audited and unaudited data on a piecemeal basis during each individual workshop.¹¹

⁹ *Id.*, ¶ 89 (footnotes omitted).

¹⁰ *Id.*, ¶ 84, n. 202.

¹¹ The OSS audit has not been completed and cannot be completed until all the PIDs have been developed and implemented to collect data.

C. U S WEST's June 30, 2000 Testimony

U S WEST recently filed its testimony on checklist items 1, 11 and 14. Attached to the Supplemental Affidavit of Lori A. Simpson (June 30, 1990) and the Supplemental Affidavit of Thomas R. Freeberg (June 30, 1990) are exhibits that contain unaudited performance data supposedly based on the Arizona PIDs. U S WEST's intent is to put the performance data in the record and obtain a preliminary finding that it meets the checklist items. Apparently, this preliminary finding could be reopened by the parties, if after the OSS testing is completed, the results show that U S WEST does not meet the checklist item.

U S WEST's proposal is unfair to the other parties. It forces the parties to waste resources arguing over performance data twice -- in the workshops and after OSS testing is complete. This makes no sense. The data submitted by U S WEST for review in the workshops is unaudited and incomplete, covering a limited period of time. The performance data available after OSS testing is complete will be audited, reflect a longer period of time and will provide data for *all* PIDs, thus giving a far more accurate and reliable picture of performance.

D. Workshops Should Be Limited to the Review of U S WEST's Legal Obligations to Provide the Checklist Items

To demonstrate that it "provides a checklist item, U S WEST must demonstrate that it has a concrete and specific legal obligation to furnish the item upon request and that it is presently ready to furnish the item. U S WEST is relying on its Statement of Generally Available Terms ("SGAT") to satisfy the first part of the requirement. It is relying on the OSS test to satisfy the second requirement.

The workshops on the remaining checklist items should be limited to determining whether U S WEST has a concrete and specific legal obligation to provide a checklist item. This is consistent with the review of U S WEST's compliance with the non-OSS checklist items during the first series of workshops. During review of the non-OSS issues, it became apparent that white pages listing, operator services and directory assistance had PIDs associated with them. Discussion of performance data was postponed. Review of the non-OSS issues was limited to review of U S WEST's legal obligation to provide a checklist item.

More importantly, there is not enough time scheduled for the next series of workshops to review U S WEST's legal obligations and the performance data. The first series of workshops took longer than anticipated, although the non-OSS issues were arguably less contentious than the remaining checklist items. It is unrealistic to assume that U S WEST's legal obligations and performance data can be addressed during the allotted time.

Even if the data were audited, there will be considerable debate over the meaning of the data. This debate should not be conducted when only limited, monthly data are available (whether unaudited or audited), but should be conducted when all results are in after the completion of the OSS test.

U S WEST also has a significant number of PIDs under development. As of May 19, 2000, there were 2 measures for checklist item 1 under development, 43 measures for checklist item 2 under development, 48 measures for checklist item 4 under development, 20 measures for checklist item 5 under development, 4 measures for checklist item 11 under development and 32 measures for checklist item 14 under development. It is ludicrous to suggest that any preliminary findings for these checklist

items can be made with so many measures under development. It would be unreasonable and an abuse of discretion for the Commission to make any finding on whether U S WEST is providing nondiscriminatory access to a checklist item using unaudited data and without *any* results for so many measures.

U S WEST wants to obtain preliminary findings that it is providing each of the checklist items, thereby shifting the burden to the competitive local exchange carriers (“CLECs”) to argue that subsequent performance data demonstrates that U S WEST is *not* providing a checklist item. U S WEST at all times retains the burden of proof.¹² “[P]romises of *future* performance...have no probative value in demonstrating its *present* compliance with the requirements of Section 271. Paper promises do not, and cannot, satisfy a BOC’s burden of proof.”¹³ At this time, the OSS test has not been completed. U S WEST’s suggestion that it is ready to furnish the checklist items is a “paper promise.”

E. The PIDs Can Change, as Can U S WEST OSS

There is the possibility that during the OSS test, U S WEST will have to change its OSS to pass the OSS test. There is also the possibility that the PIDs will have to be changed to reflect changes to U S WEST’s OSS, or more accurately reflect the current OSS. Changes may negate the relevance of earlier *audited* data.

F. Reviewing Performance Data During Workshops Requires CLECs to Expend Unnecessary Resources

AT&T is not asking the Commission to deny U S WEST the ability to put its

¹² *Ameritech Michigan Order*, ¶¶ 43-44.

¹³ *Id.*, ¶ 55 (emphasis in original). “Evidence demonstrating that BOC *intends to come into compliance* with requirements of Section 271 by day 90 is insufficient.” *Id.* (emphasis in original).

performance data in the record. AT&T is asking only that U S WEST do it all at one time, at the conclusion of the OSS testing. U S WEST is not prejudiced by reviewing the performance data at the conclusion of the OSS test. U S WEST cannot file for Section 271 relief with the FCC until OSS testing is complete and the results of the OSS test, including all the performance data, are reviewed and commented on by all the parties.

Examining performance data multiple times places an unreasonable burden on the CLECs. U S WEST has filed Section 271 Applications in multiple jurisdictions. Collaboratives also are ongoing in multiple jurisdictions. Presently, two OSS tests are being conducted -- one in Arizona and one by the ROC. All attempts should be made by the state commissions, including Arizona, to make it possible for the CLECs to meaningfully participate. Otherwise, parties may be forced to bring up issues for the first time at the FCC, instead of raising them at the state level. This simply renders the state record incomplete and forecloses the state commissions from making a decision on all of the evidence.

III. CONCLUSION


The FCC has stated that examination of a BOC's OSS performance is necessary to determine if a BOC has met a checklist item. However, the initial workshops should be limited to review of U S WEST's legal obligation to provide the checklist items. At the conclusion of the OSS testing, the PIDs and the data collection will have been audited, all measures, including the measures under development, should have audited results, and the Commission can establish a process to review the results of the OSS testing and performance data in a comprehensive manner.

A piecemeal approach serves no useful purpose. Any attempt to make preliminary findings of compliance on piecemeal performance data will impose unnecessary burdens on the CLECs and shift the burden of proof to the CLECs.

AT&T respectfully requests that the Administrative Law Judge clarify the June 12, 2000 Procedural Order by explicitly ruling that all performance data will be reviewed at the conclusion of the OSS test and that the purpose of the scheduled workshops is to determine if U S WEST has a concrete and specific legal obligation to provide the checklist items.

RESPECTFULLY SUBMITTED this 11th day of July, 2000.

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CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of the Request for Clarification of a Procedural Order Dated June 12 on behalf of AT&T Communications of the Mountain States, Inc. regarding Docket No. T-00000A-97-0238, were sent via overnight delivery this 11th day of July, 2000, to:

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